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to it since the *Hylton* case, (almost contemporaneous with the Constitution) was totally disregarded by the majority of the Court. Yet a few years later, in the *Knowlton* case, a tax on successions was held not to be a direct tax but an excise, mainly because it had been so denominated in the historic development of English tax statutes, although almost the only tax which the economists now agree to be a direct tax.

The author doubts whether it can be a business excise, since the income from all sources is made subject to the tax, and it has been repeatedly held that a corporation may have income derived from sources other than its business (pp. 43, 57 *et seq.*). He appears to conclude perhaps somewhat lightly that the tax is not one on franchises because also levied on joint stock associations. The answer to this would seem to be two-fold: the statute may well be construed to apply to those associations only which are in fact corporations, but even if the tax were upon corporations and joint stock associations in the nature of partnerships, it would nevertheless fall upon the right to be a corporation, and hence be a burden upon a state function or instrumentality. Finally the author concludes that if not an income tax it is almost impossible to classify it in any other way.

Perhaps by the time this review is printed, these legitimate doubts as to the nature and constitutionality of the Corporation Income Tax may have been resolved by the Supreme Court and the question set at rest.

Our author agrees that the attempt to classify it as an *excise* in the statute itself, is a mere *brutum fulmen*, since Congress cannot change "la nature des choses" by enactment however solemn, this higher power residing in the judiciary alone. In discussing its constitutionality, the author is guarded, but seems to incline to the view that as a tax on business income it is good, but as a tax on income from other sources it may fall within the ruling of the *Income Tax* cases. Even so, however, he inclines to the belief that it would be unconstitutional only as to that income derived direct from real and personal property.

The greater portion of the book is devoted to ascertaining what companies are subject to the tax, the method of preparing the return and the method of levying the assessment. Regarding these matters there can be no direct authority and the author seems to have construed the statute in common-sense fashion, throwing occasional side-lights from cases which construed analogous matter. This portion of the book will, if the tax be declared valid, be very useful to corporations, although probably in a short time numerous adjudications on the many obscure points in the statute will necessitate a new edition. That the law is drastic and made little provision for such indispensable requisites of "due process" as notice and hearing, is noted by our author and will be of good cheer to those who fear that lawyers in the future may find insufficient occupation.

F. R. C.

A TREATISE ON THE FEDERAL EMPLOYER'S LIABILITY AND SAFETY APPLIANCE ACTS. By W. W. THORNTON, Cincinnati, Ohio: The W. H. ANDERSON COMPANY. 1909. pp. xlvii, 410.

The title of this book is a trifle misleading, as it is less a treatise than an annotation of the federal statutes which it considers. The author is unusually reticent in the expression of his own views and in the discussion of general underlying principles. The opportunities

for such discussion are frequent, but are usually dismissed with only a line or two of consideration.

The field of the book is limited, but within that field it will be bound to be of very considerable help. It is the sort of work that will be of importance to railroad counsel and furnish them a ready reference to the decisions on the various questions involved in construing the acts considered. It will be of equal service to counsel for plaintiffs who as employes have suffered from railroad accidents of the kind sought to be provided for by the statutes.

The volume is divided into two parts, the first considering the Federal Employers' Liability Act, approved April 22, 1908, following the declaration of the Supreme Court to the effect that the prior Act of 1906 was unconstitutional. The second part of the volume is devoted to the so-called Safety Appliance Acts, enacted by the federal government at various times during the last seventeen years.

Following a discussion of the old Fellow Servant rule and the constitutionality of the federal act, the sections of the statute are taken up and thoroughly annotated. This is the really valuable element in the work, as it gives any lawyer an invaluable clue to decisions having a bearing on the construction of this new legislation. It is pointed out that all questions of the Fellow Servant rule are eliminated by this progressive legislation, and that there is incorporated into the law of the land a very sweeping modification of the questions of contributory negligence. The author gives evidence of a considerable degree of diligence in the preparation of this portion of his work, devoting considerable space to a summary of the law of Georgia and Illinois, where the doctrine of comparative negligence has been recognized in the past. This is followed by reference to the prevailing practice in admiralty of dividing the damages in cases where both parties to the litigation are in fault. From this consideration of these sources the author justifies the adoption of this new doctrine in the federal law and points the way to a practical application of the statute to cases as they arise under the Acts.

The consideration of the Safety Appliance Acts is even more brief than that of the Employers' Liability Statute, and more nearly approximates a digest of the decisions. There is a very considerable contradiction in these decisions, and the author gives the practitioner little or no suggestion as to which line of decisions is the sound one on theory.

Following these general discussions of these two bodies of legislation is an appendix containing the acts under discussion, the report of the House Judicial Committee upon the Liability Act and a collection of the most recent unreported decisions upon the Safety Appliance Acts. These decisions take up more than a hundred pages of this little volume and are of more or less ephemeral value.

Throughout the book there are very helpful references to the debates in Congress, which will suggest to the brief-maker many points of view which would not otherwise occur to him. The acts were fully debated, and more than the usual amount of legal ability was displayed in the debates, so that these annotations will be of real value in brief-making and argument. The citations of litigated cases have been gathered together with evident industry and are well classified and indexed. Within its limited field the book is a real help to the profession.

J. E. R.